

Senate, No. 2210

[November 17, 2009 – Recommended new draft from the committee on Ways and Means for Senate, No. 1651]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SENTENCING LAWS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 167 of chapter 6 of the General Laws, as appearing in the 2008 Official
2 Edition, is hereby amended by striking out, in line 2, the words “one hundred and sixty-eight to
3 one hundred seventy-eight” and inserting in place thereof the following words:- 168 to 178L,
4 inclusive.

5
6 SECTION 2. Said section 167 of said chapter 6, as so appearing, is hereby amended by inserting
7 before the definition of “criminal justice agencies” the following 3 definitions:-

8 “All available criminal offender record information”, adult and youthful offender
9 convictions, non-convictions and pending criminal court appearances, but excluding criminal
10 records sealed under section 34 of chapter 94C or sections 100A to 100C, inclusive, of chapter
11 276 or the existence of such records.

12 “Board”, the criminal record review board established under section 168.

“Commissioner”, the commissioner of the Massachusetts department of criminal justice information services.

SECTION 3. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “criminal offender record information” the following definition:-

“Department”, the Massachusetts department of criminal justice information services established under section 167A.

SECTION 4. Said section 167 of said chapter 6, as so appearing, is hereby further amended by inserting after the definition of “purge” the following 3 definitions:-

“Requestor”, any entity or individual, other than a criminal justice agency, submitting a request for criminal offender record information to the department.

“Self-audit”, an inquiry made by a subject or an advocate or agent designated by the subject to obtain a log of all queries to the department by any requestor for the subject’s criminal offender record information, but excluding any information relative to any query conducted by a criminal justice agency.

“Subject”, an individual for whom a request for criminal offender record information is submitted.

SECTION 5. Said chapter 6, as so appearing, is hereby amended by inserting after section 167 the following section:-

Section 167A. There shall be within the executive office of public safety and security a department of criminal justice information services. The department shall provide for and

exercise control over the installation, operation and maintenance of data processing and data communication systems, hereinafter called the public safety information system including, but not limited to, the criminal justice information system. Said system shall be designed to ensure the prompt collection, exchange, dissemination and distribution of such public safety information as may be necessary for the efficient administration and operation of criminal justice agencies, and to connect such systems directly or indirectly with similar systems in this or other states. The secretary of public safety and security shall appoint a commissioner who shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. Such commissioner shall not be subject to the provisions of chapter 31 or section 9A of chapter 30. The commissioner shall be responsible for all data processing, management of the public safety information system, supervision of all personnel associated with said system and the appointment of all such personnel. The commissioner may appoint such other employees, including experts and consultants, as he deems necessary to carry out the department's responsibilities, none of whom shall be subject to the provisions of chapter 31 or of section 9A of chapter 30.

The commissioner shall provide access to the public safety information system to criminal justice agencies as defined in section 167. The commissioner may promulgate rules and regulations for the control, installation, and operation of the public safety information system accessed and utilized by criminal justice agencies. The commissioner or his designee may hear and investigate complaints pertaining to misuse of the public safety information system and to issue sanctions and penalties for misuse. The commissioner may refer complaints for further

review to the criminal record review board or any state or federal agency or prosecuting authority.

The commissioner, upon the advice of the board, may promulgate regulations regarding the collection, storage, access, dissemination, content, organization and use of criminal offender record information by non-criminal justice agencies.

The department is authorized to enter into contracts and agreements with, and accept gifts, grants, contributions, and bequests of funds from, any department, agency, or subdivision of federal, state, county, or municipal government and any individual, foundation, corporation, association, or public authority for the purpose of providing or receiving services, facilities or staff assistance in connection with its work. Such funds shall be deposited with the state treasurer and may be expended by the department in accordance with the conditions of the gift, grant, contribution, or bequest, without specific appropriation.

References in any general or special law to the criminal history systems board or its executive director shall be deemed to refer to the Massachusetts department of criminal justice information services or its commissioner.

SECTION 5A. References in any general or special law to the criminal history systems board or the executive director thereof, except for the references in sections 171, 172, 172A, 172C, 172E, 172G, 172H, 172I, 172J, 173, 175, 176 and 178A of chapter 6 and in section 38R of chapter 71,

shall be deemed to refer to the Massachusetts department of criminal justice information services or its commissioner.

SECTION 6. Section 168 of said chapter 6, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

There shall be a criminal history systems board, hereinafter called the board, consisting of the following persons: the secretary of public safety and security, who shall serve as chairman, the secretary of labor and workforce development, the attorney general, the chairperson of the Massachusetts sentencing commission, the chief counsel for the committee for public counsel services, the chairman of the parole board, the commissioner of the department of correction, the commissioner of probation and commissioner of the department of youth services and the colonel of state police, or their designees, all of whom shall serve ex officio, and 10 persons to be appointed by the governor for a term of 3 years, 1 of whom shall represent the Massachusetts District Attorneys Association, 1 of whom shall represent the Massachusetts Sheriffs Association, and 1 of whom shall represent the Massachusetts Chiefs of Police Association, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall be a provider of victim services, 2 of whom shall have experience in the areas of workforce development, ex-offender rehabilitation, or economic development, and 2 of whom shall be persons who have experience in issues relating to personal privacy. Upon the expiration of the term of any appointive member, his successor shall be appointed in a like manner for a term of 3 years.

SECTION 7. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out, in line 50, the word “hundred” and inserting in place thereof the following word:- thousand.

SECTION 8. Said section 168 of said chapter 6, as so appearing, is hereby further amended by striking out, in line 50, the word “willful” and inserting in place thereof the following word:- knowing.

SECTION 9. Said section 168 of said chapter 6, as so appearing, is hereby further amended by inserting after the word “law”, in line 51, the following words:- provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of his or her official duties.

SECTION 10. Said section 168 of said chapter 6, as so appearing, is hereby amended by striking out the fourth and sixth paragraphs.

SECTION 11. Said chapter 6, as so appearing, is hereby further amended by striking out section 168 and inserting in place thereof the following section:-

Section 168. There shall be a criminal record review board within the Massachusetts department of criminal justice information services, consisting of the following persons: the secretary of public safety and security, who shall serve as chairperson, the attorney general, the secretary of labor and workforce development, the chairperson of the Massachusetts sentencing

commission, the chief counsel for the committee for public counsel services, the chairperson of the parole board, the commissioner of the department of correction, the commissioner of probation, the commissioner of the department of youth services, the colonel of state police and the presidents of the Massachusetts District Attorneys Association, the Massachusetts Sheriffs' Association and the Massachusetts Chiefs of Police Association, or their designees, all of whom shall serve ex officio, and 5 persons to be appointed by the governor, 1 of whom shall represent private users of criminal offender record information, 1 of whom shall be a victim of crime, 1 of whom shall have experience in the areas of workforce development or ex-offender rehabilitation and 2 of whom shall be persons who have experience in issues relating to personal privacy. Each appointed member shall serve for a term of 3 years or until a successor is appointed and qualified, whichever is longer.

The chairperson shall hold regular meetings, 1 of which shall be an annual meeting and shall notify all board members of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of 9 or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The board may hear complaints and investigate any incidents alleging that an individual or agency that has requested or received criminal offender record information has failed to provide the subject with the criminal offender record information in his possession prior to questioning the individual about his criminal history in connection with a decision regarding employment, volunteer opportunities, housing or professional licensing or in connection with an adverse decision on such an application on the basis of the criminal offender record information. The

board shall also have the authority to hear complaints and investigate any incidents alleging any other violation of sections 168 through 178A of this chapter or board rules and regulations. The board may charge and collect a fee as a condition for filing a complaint, which fee may be waived upon a finding of indigency. Any complaint filed with the board shall be supported by a written declaration by the complainant that it is made under the penalties of perjury. Any answer filed by a responding party shall be signed under the penalties of perjury by an individual with personal knowledge of its contents. In conducting investigations or hearings the board or department staff designated by the board shall have the power to summons witnesses, compel their attendance and testimony, require the production of books, records and documents, administer oaths and have access to all criminal offender record information. The chairperson of the board may appoint a member, panel of 3 board members or a hearing officer to conduct hearings, according to the standard rules of adjudicatory procedure or other rules which the department may promulgate, upon advice of the board. Following review of a complaint by a member, panel or hearing officer, the board, by a vote of two-thirds of the members present and voting, shall issue a ruling as to the findings of the board. In accordance with its findings the board may issue orders and sanctions enforcing its rules and regulations and the General Laws, including but not limited to a remand for additional fact finding, the imposition of civil fines payable to the commonwealth not to exceed \$5,000 for each violation, conditions on continued access to criminal offender record information or revocation of access; provided, however, that the board shall not issue any orders, sanctions or fines against a law enforcement officer who, in good faith, obtains or seeks to obtain, or communicates or seeks to communicate criminal offender record information in the furtherance of his or her official duties. The board may at any time refer a complaint for criminal prosecution under section 178 of this chapter.

The board shall make an annual report of the volume and disposition of complaints without identifying data on any complainant or other information that would include criminal offender record information relative to any person reviewed by the board to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate. The annual report shall also be available to the public upon request.

SECTION 12. Section 171 of said chapter 6, as so appearing, is hereby amended by striking out, in lines 3 to 7, inclusive, the words “(b) assuring the prompt and complete purging of criminal offender record information, insofar as such purging is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any errors shown to exist in such information; and (c) ” and inserting in place thereof the following:-
“ ;and (b)”

SECTION 13. Said section 171 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 35-48, the words “Any individual aggrieved by an agency’s decision denying access to evaluative information may appeal the denial in writing within thirty days thereafter to the board or to a three member panel thereof, as the board may determine, and the board or such panel or any court under section one hundred and seventy-seven shall have access to any certificate. The adoption of such regulations by each criminal justice agency shall be subject to the approval of the board, and shall be promulgated within time limits set by the board. If any criminal justice agency holding evaluative information fails to promulgate such regulations, then the board shall promulgate such regulations with respect to that criminal justice agency. Evaluative information shall be subject to the provisions of section one hundred and

seventy-two and section one hundred and seventy-eight, as if such information was criminal offender record information.”

SECTION 14. Said chapter 6, as so appearing, is hereby further amended by inserting after section 171 the following section:-

Section 171A. In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant’s criminal offender record information shall provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source prior to questioning the applicant about his criminal history. If the person makes a decision adverse to the applicant on the basis of his criminal history, the person shall also provide the applicant with the criminal history record in the person’s possession, whether obtained from the department or any other source; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information. Failure to provide such criminal history information to the individual in accordance with this section may subject the offending person to investigation, hearing and sanctions by the board. Nothing in this section shall be construed to prohibit a person from making an adverse decision on the basis of an individual’s criminal history or to provide or permit a claim of an unlawful practice under chapter 151B or an independent cause of action in a court of civil jurisdiction for a claim arising out of an adverse decision based on criminal history except as otherwise provided under chapter 151B.

A person who annually conducts 5 or more criminal background investigations, whether criminal offender record information is obtained from the department or any other source, shall

maintain a written criminal offender record information policy providing that, in addition to any obligations required by the commissioner by regulation, it will: (i) notify the individual of the potential adverse decision based on the criminal offender record information; (ii) provide a copy of the criminal offender record information and the policy to the individual; and (iii) provide information concerning the process for correcting a criminal record.

SECTION 15. Section 172 of said chapter 6, as so appearing, is hereby amended by inserting after the word “privacy”, in lines 14 and 40, the following words, in each instance:- and the importance and value of successful reintegration of ex-offenders.

SECTION 16. Said chapter 6, as so appearing, is hereby further amended by striking out section 172 and inserting in its place thereof the following section:-

Section 172. (a) The department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the world wide web. Except as provided otherwise in this chapter, access to the database shall be limited as follows:

(1) Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms licensing in accordance with sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.

(2) Requestors authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under subsection (a)(3) may

234 obtain such information to the extent and for the purposes authorized by said statute, regulation
235 or accreditation requirement.

236 (3) Requestors and their agents may obtain criminal offender record information for any of the
237 following purposes: (a) to evaluate current and prospective employees including full-time, part-
238 time, contract, internship employees or volunteers; (b) to evaluate applicants for rental or lease of
239 housing; (c) to evaluate volunteers for services; and (d) to evaluate applicants for professional
240 licensure issued by a state or municipal entity. Criminal offender record information made
241 available under this section shall be limited to the following: (i) felony convictions for 10 years
242 following their disposition, including termination of any period of incarceration or custody as
243 defined in section 1 of chapter 125, (ii) misdemeanor convictions for 5 years following their
244 disposition, including termination any period of incarceration or custody as defined in section 1
245 of chapter 125, and (iii) pending criminal charges, which shall include cases that have been
246 continued without a finding until such time as the case is dismissed pursuant to section 18 of
247 chapter 278 ; provided, however, that prior misdemeanor and felony conviction records shall be
248 available for the entire period that the subject's last available conviction record is available under
249 this section 172; and provided further that a violation of section 7 of chapter 209A shall be
250 treated as a felony for purposes of this section.

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252 (4) Any member of the general public may upon written request to the department obtain the
253 following criminal offender record information: (i) convictions for any felony punishable by a
254 term of imprisonment of 5 years or more; (ii) felony convictions for 2 years following their
255 disposition, including any period of incarceration or custody as defined in section 1 of chapter

125; and (iii) misdemeanor convictions for 1 year following their disposition, including any period of incarceration or custody as defined in section 1 of chapter 125.

(5) Subjects who seek to obtain their own criminal offender record information, or an advocate or agent designated by the subject, may obtain all criminal offender record information pertaining to the subject under section 175 of this chapter.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under subsections (1) through (5) above if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy thereof with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting access provided under this subsection. The annual report shall be available to the public upon request.

(b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are punishable by a term of incarceration in state prison will remain in the database permanently and shall be available to all requestors listed in subsections (a)(1) through (a)(3) unless sealed under section 100A of chapter 276.

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278 (c) The department shall specify the information that requestors must provide to query the
279 database, including, but not limited to, the subject's name, date of birth and the last four digits of
280 the subject's social security number; provided, however, that a member of the public accessing
281 information under subsection (a)(4) shall not be required to provide the last four digits of the
282 subject's social security number. To obtain criminal offender record information concerning a
283 subject under subsection (a)(2) or (a)(3), the requestor must certify under the penalties of perjury
284 that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose
285 authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement
286 form authorizing the requestor to obtain the subject's criminal offender record information. The
287 requestor must also certify that he has verified the identity of the subject by reviewing a form of
288 government-issued identification. Each requestor shall maintain acknowledgement forms for a
289 period of one year from the date the request is submitted. Such forms shall be subject to audit by
290 the department. The department may establish rules or regulations imposing other requirements
291 or affirmative obligations upon requestors as a condition of obtaining access to the database.

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293 In connection with any decision regarding employment, volunteer opportunities, housing or professional
294 licensing, a person in possession of an applicant's criminal offender record information shall provide the
295 applicant with the criminal history record in the person's possession, whether obtained from the
296 department or any other source, (a) prior to questioning the applicant about his criminal history and (b) if
297 the person makes a decision adverse to the applicant on the basis of his criminal history; provided,
298 however, that if the person has provided the applicant with a copy of his criminal offender record
299 information prior to questioning the person is not required to provide the information a second time in

connection with an adverse decision based on this information. Failure to provide such criminal history information to the individual in accordance with this section may subject the offending person to investigation, hearing and sanctions by the board.

Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

No employer or person relying on volunteers shall be liable for negligent hiring practices by reason of relying solely on criminal offender record information received from the department and not performing additional criminal history background checks, unless required to do so by law, provided that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's identifying information consistent with the requirements set forth in this section and in the the department's regulations.

No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department, if the employer would not have been liable if the information had been accurate, provided that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the individual's information consistent with the requirements set forth in this section and the department's regulations.

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323 Neither the board nor the department shall be liable in any civil or criminal action by reason of
324 any criminal offender record information or self-audit log that is disseminated by the board,
325 including any information that is false, inaccurate or incorrect because it was erroneously entered
326 by the court or the office of the commissioner of probation.

327

328 (d) Requestors shall not disseminate criminal offender record information except (1) upon
329 request by a subject, a requestor shall provide criminal offender record information received
330 from the department to the subject to whom it pertains; (2) requestors may share criminal
331 offender record information with individuals within the requesting entity that have a need to
332 know the contents of the criminal offender record information to serve the purpose for which the
333 information was obtained; and (3) upon request, requestors shall share criminal offender record
334 information with the government entities charged with overseeing, supervising, or regulating
335 them. Requestors shall maintain a secondary dissemination log for a period of one year
336 following the dissemination of a subject's criminal offender record information. The log shall
337 include the following information: (i) name of subject; (ii) date of birth of the subject; (iii) date
338 of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for
339 the dissemination. The secondary dissemination log shall be subject to audit by the department.

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341 Unless otherwise provided by law or court order, no requestor shall maintain a copy, electronic
342 or otherwise, of requested criminal offender record information obtained from the department for

more than 7 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(e) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the department shall establish a mechanism that will notify a subject, or an advocate or agent designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log shall not be considered a public record.

(f) Notwithstanding the provisions of this section, the motor vehicle insurance merit rating board may disseminate information concerning convictions of automobile law violations as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor vehicle while under the influence of intoxicating liquor that results in assignment to a driver alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or policyholders to be used exclusively for motor vehicle insurance purposes.

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366 (g) Notwithstanding any other provisions of this section, information indicating custody status
367 and placement within the correction system shall be available to any person upon request;
368 provided, however that no information shall be disclosed that identifies family members, friends,
369 medical or psychological history, or any other personal information unless such information is
370 directly relevant to such release or custody placement decision, and no information shall be
371 provided if its release would violate any other provisions of state or federal law.

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373 (h) The parole board, subject to sections 130 and 154 of chapter 127, the department of
374 correction, a county correctional authority or a probation officer with the approval of a justice of
375 the appropriate division of the trial court may, in its discretion, make available a summary, which
376 may include references to criminal offender record information or evaluative information,
377 concerning a decision to release an individual on a permanent or temporary basis, to deny such
378 release, or to change the individual's custody status.

379

380 (i) Notwithstanding any other provision of this section or any other general or special law to the
381 contrary, members of the public who are in fear of an offender may obtain from the department
382 advance notification of the temporary or permanent release of an offender from custody,
383 including but not limited to expiration of a sentence, furlough, parole, work release or
384 educational release. An individual seeking access to advance notification shall verify by a
385 written declaration under the penalties of perjury that the individual is in fear of the offender and
386 that advance notification is warranted for physical safety reasons.

387

388 (j) Any individual or agency, public or private, that receives or obtains criminal offender record
389 information from any source in violation of sections 168 through 175 of this chapter, whether
390 directly or through any intermediary, shall not collect, store, disseminate, or use such criminal
391 offender record information in any manner or for any purpose.

392

393 (k) Notwithstanding this section or chapter 66A, the following shall be public records: (1) police
394 daily logs, arrest registers, or other similar records compiled chronologically; (2) chronologically
395 maintained court records of public judicial proceedings; (3) published records of public court or
396 administrative proceedings, and of public judicial administrative or legislative proceedings; and
397 (4) decisions of the parole board as provided in section 130 of chapter 127.

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399 (l) The commissioner, upon the advice of the board, may promulgate rules and regulations to
400 carry out the provisions of this section.

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402 SECTION 17. Said chapter 6, as so appearing, is hereby further amended by striking out section
403 172A and inserting in place thereof the following section:-

404

405 Section 172A. The commissioner shall assess a fee for each request for criminal offender
406 record information or self-audit, according to a fee structure established by the secretary of
407 public safety and security. No fee shall be assessed for a request made by a victim of crime or a

witness or a family member of a homicide victim, all as defined in section 1 of chapter 258B, or for a request made by any local, state or federal government entity. The commissioner shall waive the fee or a portion of the fee from such other persons as provided in the department's rules and regulations.. The department is authorized to enter into contracts and agreements for reduced or bulk fees for requestors who make extensive use of the database.

The department shall be authorized, subject to appropriation, to retain a portion of the revenues received by the commonwealth under this section for the following purposes: to assist ex-offenders in obtaining and maintaining employment, training and auditing requestors described in subsection (a) of section 172, providing education and assistance regarding the correction of criminal records and to operate and maintain the public safety information system and the criminal records review board.

SECTION 18. Section 172E of said chapter 6, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Notwithstanding section 172, criminal offender record information shall be available to any long term care facility, as defined in section 72W of chapter 111, for the purpose of evaluating applicants under final consideration for, or an individual currently working as, an employee, volunteer or provider of care, treatment, education, training, transportation, delivery of meals, instruction, counseling, supervision, recreation or other services for an elderly or disabled person or who will have any direct or indirect contact with such elderly or disabled persons or access to such persons' personal information. Any such long term care facility shall

430 obtain all available criminal offender record information from the department on such applicant
431 or current staff member. A long term care facility which obtains information under this section
432 shall prohibit the dissemination of such information for any purpose other
433 than to further the protection of the elderly or the disabled, including, but not limited to,
434 dissemination among and between long term care facilities.

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436 SECTION 19. Said section 172E of said chapter 6, as so appearing, is hereby further amended
437 by striking out, in lines 16-18, the words “for a position that involves the provision of direct
438 personal care or treatment to residents of such facility”.

439

440 SECTION 20. Section 172H of said chapter 6, as so appearing, is hereby amended by striking
441 out, in line 4, the words “that accepts volunteers,”.

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443 SECTION 21. Said section 172H of said chapter 6, as so appearing, is hereby further amended
444 by striking out, in line 6, the words “a volunteer” and inserting in place thereof the following
445 words:- an employee, volunteer, vendor or contractor.

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447 SECTION 22. Said chapter 6, as so appearing, is hereby amended by inserting after section 172J
448 the following two sections:-

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Section 172K. Notwithstanding section 172 or any other general or special law to the contrary, housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating applications for housing owned by such housing authority, in order to further the protection and well-being of tenants of such housing authorities.

Section 172L. Notwithstanding section 172 or any other general or special law to the contrary, the Massachusetts department of telecommunications and energy may obtain from the department all available criminal offender record information for the purpose of screening applicants for motor bus driver certificates and applicants who regularly transport school age children or students under chapter 766 in the course of their job duties. The Massachusetts department of telecommunications and energy shall not disseminate such information for any purpose other than to further the protection of children.

SECTION 23. Section 173 of said chapter 6, as so appearing, is hereby amended by striking out, in line 1, the words "The board", and inserting in place thereof the following words:- The commissioner may approve research programs to obtain criminal offender record information, provided that research programs shall not publish any information that either identifies or tends to identify the subject of the criminal offender record information, and the commissioner

SECTION 24. Said section 173 of said chapter 6, as so appearing, is hereby further amended by striking out, in lines 7, 9 and 10 the word “board”, and inserting in place thereof, in each instance, the following word:- commissioner.

SECTION 25. Said chapter 6, as so appearing, is hereby further amended by striking out section 175 and inserting in place thereof the following section:-

Section 175. A subject shall have the right to inspect, and if practicable, obtain a copy of all criminal offender record information that refers to the subject. The commissioner shall publish and furnish, upon request, guidelines for individuals on how to correct inaccurate or incomplete information. Subject to appropriation, the department shall provide assistance to individuals that have requested assistance to correct inaccurate or incomplete criminal offender record information. Such assistance shall include but not be limited to cooperation with appropriate entities to correct, modify or appropriately supplement criminal offender record information that has been determined to be inaccurate or incomplete. If criminal offender record information is corrected by the office of the commissioner of probation or the courts, any corrections made by such commissioner or court shall be transmitted forthwith to the department and the department’s database shall reflect the corrected criminal offender record information.

Requestors shall prescribe reasonable hours and places for subjects to inspect their criminal offender record information under subsection (d)(1) of section 172 and shall impose

such additional restrictions as are reasonably necessary both to ensure the record's security and to verify the identities of those who seek to inspect them.

SECTION 26. Said chapter 6 is hereby further amended by striking out section 178, as so appearing, and inserting in place thereof the following two sections:-

Section 178. Any person who knowingly requests, obtains or attempts to obtain criminal offender record information or a self-audit from the department under false pretenses, knowingly communicates or attempts to communicate criminal offender record information to any person except in accordance with the provisions of sections 168 through 175, or knowingly falsifies criminal offender record information, or any records relating thereto, or who requests or requires a person to provide a copy of his or her criminal offender record information except as authorized under section 172, shall for each offense be imprisoned in a jail or house of correction for not more than one year or fined not more than \$5,000 or both, and in the case of a person that is not a natural person, the amount of the fine may be not more than \$50,000 for each violation.

Any person who knowingly requests, obtains or attempts to obtain juvenile delinquency records from the department under false pretenses, knowingly communicates or seeks to communicate juvenile criminal records to any person except in accordance with the provisions of sections 168 through 175, or knowingly falsifies juvenile criminal records, shall for each offense be imprisoned in a jail or house of correction for not more than one year or fined not more than

\$7,500, or both, and in the case of a person that is not a natural person entity, the amount of the fine may be not more than \$75,000 for each violation.

This section shall not apply to, and no prosecution shall be brought against, a law enforcement officer who, in good faith, obtains or seeks to obtain or communicates or seeks to communicate criminal offender record information in the furtherance of his or her official duties.

Section 178 ½. Whoever uses criminal offender record information to commit a crime against the subject of the criminal offender record information or to engage in harassment of the subject, shall be punished by not more than \$5,000 or imprisoned in a jail or house of correction for not more than one year, or both. For purposes of this section, "harassment" shall mean willfully and maliciously engaging in conduct or acts directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer emotional distress.

SECTION 27. Said chapter 6 is hereby further amended by striking out section 178A, as so appearing, and inserting in place thereof the following section:-

Section 178A. A victim of crime, witness, or family member of a homicide victim, all as defined by section 1 of chapter 258B, may obtain all available criminal offender record information of the offender. Criminal justice agencies may also disclose to such persons such additional information, including but not limited to evaluative information, as such agencies determine is reasonably necessary for the security and well being of such persons.

SECTION 28. Section 178K of said chapter 6, as so appearing, is hereby amended by striking out, in lines 1 to 2, the words “in the criminal history systems board, but not subject to its jurisdiction”, and inserting in place thereof the following words:- in the executive office of public safety and security.

SECTION 29. Chapter 6A of the General Laws, as so appearing, is hereby amended by striking out section 18 and inserting in place thereof the following section:-

Section 18. The following state agencies are hereby declared to be within the executive office of public safety and security: the department of public safety; the department of fire services; the office of grants and research and the highway safety division; the municipal police training committee; the Massachusetts department of criminal justice information services; the state department; the department of state police; the office of the chief medical examiner; the Massachusetts emergency management agency; the military department; the department of correction, including the parole board; the sex offender registry board; and all other agencies and boards within said departments, committees, and boards.

SECTION 30. Section 5 of chapter 27 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- The parole board shall administer and oversee mandatory post-release supervision functions as set forth in section 133D(a) of chapter 127 and in chapter 127A.

554

555 SECTION 31. Chapter 30A of the General Laws, as so appearing, is hereby amended by
556 inserting after section 1C the following section:- Section 1D. The criminal record review board
557 shall be subject to sections 1 through 8, inclusive, and shall not otherwise be subject to this
558 chapter.

559

560 SECTION 32. Section 52 of chapter 93 of the General Laws, as so appearing, is hereby
561 amended by inserting after the word “more;”, in line 21, the following word:- or.

562

563 SECTION 33. Said section 52 of said chapter 93, as so appearing, is hereby further amended by
564 striking out, in lines 24 to 27, inclusive, the words “; or (3) the employment of any individual at
565 annual salary which equals or which may reasonably be expected to equal twenty thousand
566 dollars or more”.

567

568 SECTION 34. Section 32 of chapter 94C of the General Laws, as so appearing, is hereby
569 amended by adding the following subsection:-

570 (c) Any person serving a mandatory minimum sentence for violating any provision of this
571 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
572 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
573 if the sentence is to a house of correction.

574 SECTION 35. Section 32A of said chapter 94C, as so appearing, is hereby amended by adding
575 the following subsection:-

576 (e) Any person serving a mandatory minimum sentence for violating any provision of this section shall be
577 eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to
578 a state prison or after serving one-half of the minimum term of the sentence if the sentence is to a
579 house of correction.

580

581 SECTION 36. Section 32B of said chapter 94C, as so appearing, is hereby amended by adding
582 the following subsection:-

583 (c) Any person serving a mandatory minimum sentence for violating any provision of this
584 section shall be eligible for parole after serving two-thirds of the minimum term of the sentence
585 if the sentence is to a state prison or after serving one-half of the minimum term of the sentence
586 if the sentence is to a house of correction.

587

588 SECTION 37. Section 32E of said chapter 94C, as so appearing, is hereby amended by adding
589 the following subsection:-

590

591 (d) Any person serving a mandatory minimum sentence for violating any provision of this section
592 shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the

593 sentence is to a state prison or after serving one-half of the minimum term of the sentence if the
594 sentence is to a house of correction.

595 SECTION 38. Section 32F of said chapter 94C, as so appearing, is hereby amended by adding
596 the following subsection:-

597 (e) Any person serving a mandatory minimum sentence for violating any provision of this section shall be
598 eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to
599 a state prison or after serving one-half of the minimum term of the sentence if the sentence is to a
600 house of correction.

601

602 SECTION 39 Section 32H of said chapter 94C, as so appearing, is hereby amended by striking
603 out the second paragraph and inserting in place thereof the following paragraph:-

604 A person convicted of violating any provisions of said sections shall not, until he shall have
605 served the mandatory minimum term of imprisonment established in said sections, be eligible for
606 probation, furlough or receive any deduction from his sentence for good conduct under sections
607 129C and 129D of chapter 127; provided, however, that the commissioner of correction may, on
608 the recommendation of the warden, superintendent or other person in charge of the correctional
609 institution, grant to the offender a temporary release, subject to the rules and regulations of the
610 institution and under the direction, control and supervision of the officers thereof, for the
611 following purposes: to attend the funeral of a relative, to visit a critically ill relative, to obtain
612 emergency medical or psychiatric services unavailable at said institution; to participate in
613 education, training, or employment programs established under section 48 of chapter 127; to

engage in employment pursuant to a work release program in accordance with the provisions of sections 49 and 49A of chapter 127; or to participate in a program to provide services under sections 49B or 49C of chapter 127. The provisions of section 87 of chapter 276 shall not apply to any person 17 years of age or over, charged with a violation of said sections, or to any child between age 14 and 17 so charged by indictment under section 54 of chapter 119.

SECTION 40. Section 32J of said chapter 94C, as so appearing, is hereby amended by adding the following paragraph:-

Any person serving a mandatory minimum sentence for violating any provision of this section shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison or after serving one-half of the minimum term of the sentence if the sentence is to a house of correction.

SECTION 41. Section 14 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences:- The district attorney or the attorney general at the request of the district attorney may petition the court for a trial. In any trial held pursuant to this section, either the person named in the petition or the petitioning party may demand in writing that the case be tried to a jury, and upon such demand the case shall be tried to a jury.

635

636 SECTION 42. Section 1 of chapter 125 of the General Laws, as so appearing, is hereby amended
637 by striking out subsections (g) to (p), inclusive, and inserting in place thereof the following
638 subsections:-

639 (g) “custody”, physical or constructive control of an inmate in a state or county correctional
640 facility;

641 (h) “department”, the department of correction;

642 (i) “gainful employment”, employment within or without any correctional facility including but
643 not limited to labor for the operation and maintenance of any correctional facility;

644

645 (j) “inmate”, a committed offender or such other person as is placed in custody in a correctional
646 facility in accordance with law;

647

648 (k) “institution”, facility;

649 (l) “penal institution”, correctional facility;

650 (m) “prison”, correctional facility;

651 (n) “prisoner”, a committed offender and such other person as is placed in custody in a
652 correctional facility in accordance with law;

653

654 (o) “state correctional facility”, any correctional facility owned, operated, administered or subject
655 to the control of the department of correction, including but not limited to: Massachusetts
656 Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk;

657 Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution,
658 Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional
659 Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts
660 Correctional Institution, Monroe;

661

662 (p) “state prison”, Massachusetts Correctional Institution, Cedar Junction;

663

664 (q) “superintendent”, the chief administrative officer of a state correctional facility.

665

666 SECTION 43. Section 16 of chapter 126 of the General Laws, as so appearing, is hereby
667 amended by striking out the first sentence and inserting in place thereof the following sentence:-

668 The sheriff shall have custody and control of the jails in his county, and except in Suffolk
669 county, of the houses of correction therein, and shall have custody and physical or constructive
670 control of all prisoners committed thereto, and shall keep the same himself or by his deputy as
671 jailer, superintendent or keeper, and shall be responsible for them.

672

673 SECTION 44. Chapter 127 of the General Laws, as so appearing, is hereby amended by
674 inserting after section 20A the following two sections:-

675

676 Section 20B. The sheriff of any county may establish a day reporting program under which
677 persons sentenced to the house of correction, except a sex offender as defined in section 178C of
678 chapter 6, may be classified to constructive confinement. Such program shall include electronic
679 monitoring of prisoners classified to the day reporting program. Placement of an individual in a

day reporting program shall require victim notification as required under section 3(t) of Chapter 258B. Any inmate sentenced to such program shall agree in writing to conditions set by the sheriff, who shall retain the right to revoke or alter such classification at will.

No prisoner shall be classified to a day reporting program under this section until he has served the longest minimum mandatory sentence for any offense for which the prisoner is serving within the house of correction to which he is committed.

A prisoner classified to the day reporting program as set forth in this section and who abides by the conditions of said classification shall be credited time toward the serving of his sentence in the same manner as though he had served such time within the facility.

Section 20C. The sheriff of any county and in the case of women who are committed as pretrial detainees to the Massachusetts Correctional Institution at Framingham, the commissioner of correction, subject to rules and regulations established in accordance with the provisions of this section, may permit a detainee who is committed to a jail awaiting disposition of any criminal matter, except those being held for offenses listed in this section, or may permit a person committed to the jail for contempt of court, to be classified to a pretrial diversion program operated by the sheriff's office in the county where the court that committed the detainee is sitting.

The sheriff may extend the limits of the place of confinement of a detainee for the purpose of participation in this program and shall establish a classification system to determine the

suitability of detainees who may be potential participants in this program. A person permitted to be away from the jail due to participation in this program may be accompanied by an employee of the sheriff's office in the discretion of the sheriff or his designee.

For the duration of his participation in the program, the detainee shall be deemed to be in custody as a pretrial detainee for the purpose of receiving credit pursuant to section 129B of chapter 127 and section 33A of chapter 299 toward any sentence he may receive, and may be charged with escape pursuant to section 16 of chapter 268 should he leave the place to which he is classified to pursuant to his participation in the program without authorization or should they escape from custody while they are being transported pursuant to their participation in the program. Additionally for the duration of his participation in this program only, the detainee may receive additional deductions from any sentence that may be imposed in the case he was committed on, for participation in work, education, or treatment programs designated by the sheriff pursuant to section 129D of chapter 127.

A detainee shall not be eligible to participate in this program if he is charged with: murder; any offense that carries the possibility of a life sentence; a violation of section 13, 14, 15, 15A, 15B, 16, 17, 18, 18A, 19, 20, 21, 24B, 25, or 26 of chapter 265; section 17, 34 or 35 of chapter 272; or an attempt to commit any crime referred to in these sections; or if he is detained under subsection (3) of section 58A of chapter 276. No sex offender, or sexually dangerous person as defined in section 1 of chapter 123A or any person who is charged with committing a sexual offense as defined in said section 1 of said chapter 123A, or any person who who is charged with violating section 24B of chapter 265. Placement of an individual in such program shall require victim notification as required under Chapter 258B section 3(t).

727

728

729 SECTION 45. Section 21 of said chapter 127, as so appearing, is hereby amended by inserting
730 after the word “correction” in line 3 the following words:-
731 to physical or constructive confinement,.

732

733 SECTION 46.

734 SECTION 47.

735

736 SECTION 48. The General Laws, as appearing in the 2008 Official Edition, are hereby amended
737 by inserting after chapter 127 the following chapter:-

738

CHAPTER 127A

739

MANDATORY POST-RELEASE SUPERVISION

740

741 Section 1. All sentences of incarceration to state prison shall include a period of post-release
742 supervision, excluding sentences for those prisoners for whom parole eligibility is determined by
743 section 133 of chapter 127. Except as provided in this chapter, for individuals who complete the
744 incarceration portion of their sentences without supervised release or are re-incarcerated for the
745 remainder of the sentence for violating the terms of parole or probation, the period of mandatory
746 post-release supervision shall be 25 per cent of the maximum term of incarceration imposed at

sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months. Where an individual is sentenced to incarceration on multiple offenses to be served concurrently, the greater of the maximum terms imposed at sentencing shall be used to calculate the mandatory post-release supervision period. Mandatory post-release supervision as established in this chapter shall not be imposed upon any individual who successfully completes a period of probation imposed by a court at sentencing, upon an individual who is granted a parole permit under chapter 127 and successfully completes a period of parole supervision, or upon an individual sentenced to lifetime community parole under section 45 of chapter 265 or section 178H of chapter 6, being supervised under section 133D of chapter 127. An individual subject to this chapter may be supervised in another jurisdiction in accordance with sections 151A through 151N of chapter 127 and shall be considered on parole for the purposes of supervision.

Section 2. Upon release, an individual sentenced to a term of incarceration in a state prison for any length of time shall be subject to the supervision and jurisdiction of the parole board during the period of mandatory post-release supervision and shall be subject to the law, rules and regulations governing parole. The chairman of the parole board shall establish regulations for post-release supervision consistent with applicable provisions of chapters 27 and 127. The regulations shall establish supervision levels based on risk-needs assessments, ranging from minimum parole supervision for low-risk parolees to maximum parole supervision of high-risk parolees, with a focus on reducing the risk posed by high-risk parolees. The regulations shall include the use of graduated and intermediate sanctions as appropriate in response to non-criminal violations of parole conditions and, in the discretion of the board, for low-level criminal violations. The regulations shall also establish guidelines with specific benchmarks, which if

achieved by an individual shall reduce the period of time in which such individual is subject to post-release supervision. Nothing in this section or in the regulations shall limit the authority of the superior, municipal, district or juvenile court to impose conditions of probation supervision to protect the public or promote the rehabilitation of any person.

Section 3. An individual subject to mandatory post-release supervision who has successfully completed 6 months of supervision shall be eligible for early termination of that supervision. Early termination shall only occur in accordance with procedures to be adopted in the regulations of the parole board. In proceedings for early termination of mandatory post-release supervision, the parole board's considerations shall include, but not be limited to, the amount of time the individual has successfully spent under post-release supervision, efforts and achievements in the areas of employment, housing, education, counseling, substance abuse treatment and required testing programs, and any other circumstances that are relevant to the individual case.

Section 4. An individual who violates a condition of mandatory post-release supervision shall be subject to this section and to modification or revocation proceedings initiated by the parole board. The laws and regulations governing parole violation proceedings shall govern these modification or revocation proceedings. In all proceedings under this section, an individual who violates a condition of mandatory post-release supervision and such violation does not otherwise constitute a criminal offense may be placed under increased supervision, subjected to other conditions and intermediate sanctions, or upon a determination that such alternative sanctions are not appropriate, incarcerated as follows: Upon a first violation, the individual may be

incarcerated for a period no greater than 2 months or the maximum remaining period of post-incarceration supervision, whichever is less. Upon a second violation, the prisoner may be incarcerated for a period no greater than 6 months or the maximum remaining period of post-incarceration supervision, whichever is less. Upon a third or subsequent violation the prisoner, may be incarcerated for a period no greater than 12 months or the maximum remaining period of post-incarceration supervision, whichever is less. In all cases where the individual is not being incarcerated for a violation, the individual shall be subject to the graduated sanctions policy of the parole board. In the case of any violation for use of controlled substances or an offense for operating under the influence of drugs or alcohol where the individual is not incarcerated for the violation, the period of mandatory post-release supervision may be extended to accommodate an appropriate substance abuse program, but the total shall not exceed the maximum supervisory period permitted under section 1. For any violation of the conditions of mandatory post-release supervision, the period of supervision shall be stayed during a period of incarceration and it shall be resumed upon release. If the violation constitutes a criminal offense, the period of incarceration shall be served on and after any sentence received as a result of the new offense. Upon subsequent release, the greater of the maximum sentences of the original offense and subsequent offense shall be used to calculate the new mandatory post-release supervision period.

Section 5. Mandatory post-release supervision shall be considered stayed under the following circumstances: (a) the individual is immediately committed to the custody of any other state or of the United States to serve a period of incarceration less than the post-release supervision period required under this chapter; (b) the individual is immediately committed to the custody of the

815 United States immigration authorities; or (c) the individual is committed pursuant to an order of
816 custody under chapter 123A.

817

818 Section 6. Mandatory post-release supervision shall be considered completed under the
819 following circumstances: (a) except as provided in sections 3 and 4, the individual serves a post-
820 release supervision period of 25 per cent of the maximum term of incarceration imposed at
821 sentencing up to a maximum period of supervision of 2 years, but in no case less than 9 months;
822 (b) the individual is granted early termination under section 3; (c) upon completion of the
823 sentence, the individual is immediately committed to the custody of any other state or of the
824 United States to serve a period of incarceration greater than or equal to the post-release
825 supervision period required under this chapter; or (d) upon completion of the sentence, the
826 individual is physically removed from the United States by immigration authorities for the
827 purpose of permanent deportation.

828

829 SECTION 48A. Section 130 of said chapter 127, as so appearing, is hereby amended by striking out
830 the first sentence and inserting in place thereof the following 3 sentences:— No prisoner shall be
831 granted a parole permit merely as a reward for good conduct but only if the parole board is of the
832 opinion that there is a reasonable probability that, if such prisoner is released, in light of appropriate
833 conditions and community supervision, he will live and remain at liberty without violating the law
834 and that his release is not incompatible with the welfare of society. In making this determination, the
835 board shall consider whether, during the period of incarceration, the prisoner has participated in
836 available work opportunities and education or treatment programs, and demonstrated good behavior.
837 The board shall also consider whether risk reduction programs made available through collaboration

with criminal justice agencies would minimize the probability of the prisoner re-offending once released. In making this determination, the board shall not consider the availability of post-release supervision as authorized under chapter 127A

Section 49. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by inserting, after paragraph (9), the following paragraph:-

(9 ½) For an employer to request on a written application form criminal offender record information; provided, however, that if an applicant is applying for a position for which federal or state laws or regulations create mandatory or presumptive disqualification based on certain criminal offenses the employer may inquire about such offenses on the applicant's application form.

SECTION 50. Section 21 of chapter 233 of the General Laws, as so appearing, is hereby amended by inserting, at the end, the following paragraph:-

Upon order of the court, a party may obtain a witness's criminal offender record information from the department of criminal justice information services.

858 SECTION 51. Section 16 of chapter 268 of the General Laws, as so appearing, is hereby
859 amended by inserting after the word “branch,” in line 10, the following words:-
860 “or who, on any other form of constructive confinement, knowingly disables or attempts to
861 disable or defeat electronic monitoring of the prisoner,”

862

863 SECTION 52. Section 100A of chapter 276 of the General Laws, as so appearing, is hereby
864 amended by inserting after the word “misdemeanor,” in line 8, the following words:- record to be
865 sealed.

866

867 SECTION 53. Said section 100A of said chapter 276, as so appearing, is hereby further
868 amended by striking out, in line 8, the word “ten” and inserting in place thereof the following
869 figure:- five.

870

871 SECTION 54. Said section 100A of said chapter 276, as so appearing, is hereby further
872 amended by inserting after the word “felony,” in line 11, the following words:- record to be
873 sealed.

874

875 SECTION 55. Said section 100A of said chapter 276, as so appearing, is hereby further
876 amended by striking out, in line 11, the word “fifteen” and inserting in place thereof the
877 following figure:- ten.

878

879 SECTION 56. Said section 100A of said chapter 276, as so appearing, is hereby further
880 amended by striking out, in line 13, the words “ten years preceding such request” and inserting in
881 place thereof the following words:- in the case of a misdemeanor, 5 years preceding such
882 request, and in the case of a felony, 10 years preceding such request.

883

884 SECTION 57. Said section 100A of said chapter 276, as so appearing, is hereby further
885 amended by striking out, in line 19, the words “within the preceding ten years” and inserting in
886 place thereof the following words:- in the case of a misdemeanor, within the preceding 5 years,
887 and in the case of a felony, within the preceding 10 years.

888

889 SECTION 58. Said section 100A of said chapter 276, as so appearing, is hereby further
890 amended by inserting, after line 40, the following words:-

891 5. For purposes of this section, any violation of section 7 of chapter 209A shall be treated
892 as a felony.

893 6. Sex offenses, as defined in section 178C of chapter 6, shall not be eligible for sealing for 10
894 years following their disposition, including termination of supervision, probation or any period
895 of incarceration, or for so long as the offender is under a duty to register in the commonwealth or
896 in any other state where the offender resides or would be under such a duty if residing in the
897 commonwealth, whichever is longer.

898

899 SECTION 59. Said section 100A of said chapter 276, as so appearing, is hereby further
900 amended by inserting after the word “proceedings”, in line 52, the following words:- , and except
901 that in any proceedings under sections 1 to 39I, inclusive, of chapter 119, sections 2 to 5,
902 inclusive, of chapter 201, chapters 208, 209, 209A, 209B, 209C, or sections 1 to 11A, inclusive,
903 of chapter 210, a party may, upon motion for good cause shown, inspect in camera the sealed
904 records of another party and may introduce such sealed records into evidence, provided that the
905 court determines the records are otherwise relevant and admissible, and, provided further, that
906 such records are not discussed in open court and, if admitted, are impounded and made available
907 only to the parties, their attorneys, and court personnel who have a demonstrated need to receive
908 them.

909

910 SECTION 60. Section 100C of said chapter 276, as so appearing, is hereby amended by striking
911 out, in lines 11-12, the words “except in cases in which an order of probation has been
912 terminated,”.

913

914 SECTION 61. Said section 100C of said chapter 276, as so appearing, is hereby further
915 amended by inserting after the word “commissioner”, in line 29, the following words:- or the
916 clerk of courts in any district, superior, or the Boston municipal court,

917

918 SECTION 62. Chapter 276 of the General Laws, as so appearing, is hereby amended by
919 inserting after section 100C the following section:-

920

921 Section 100D. Notwithstanding any provision of section 100A, 100B, or 100C of this chapter,
922 criminal justice agencies as defined in section 167 of chapter 6 shall have immediate access to,
923 and be permitted to use as necessary for the performance of their criminal justice duties, any
924 sealed criminal offender record information as defined in section 167 of chapter 6 and any sealed
925 information concerning criminal offenses or acts of delinquency committed by any person before
926 he attained the age of 17.

927

928

929 SECTION 63. Section 34 of chapter 279 of the General Laws, as so appearing, is hereby
930 amended by inserting after the word “accordingly”, in line 5, the following words,- “for the
931 duration of the sentence and within classification guidelines of the facility to which said convict
932 is committed.”

933

934 SECTION 64. Notwithstanding any general or special law to the contrary, this section shall
935 facilitate the orderly transfer of the employees, proceedings, rules and regulations, property and
936 legal obligations of the criminal history systems board, as the transferor agency, to the
937 department of criminal justice information services, as the transferee agency, as follows:

938

939 (a) Subject to appropriation, the employees of the criminal history systems board, including
940 those who immediately before the effective date of this act hold permanent appointment in
941 positions classified under chapter 31 of the General Laws or have tenure in their positions as

provided by section 9A of chapter 30 of the General Laws or do not hold such tenure, or hold confidential positions, are hereby transferred to the department of criminal justice information services, without interruption of service within the meaning of said section 9A of said chapter 31, without impairment of seniority, retirement or other rights of the employee, and without reduction in compensation or salary grade, notwithstanding any change in title or duties resulting from such reorganization, and without loss of accrued rights to holidays, sick leave, vacation and benefits, and without change in union representation or certified collective bargaining unit as certified by the state labor relations commission or in local union representation or affiliation. Any collective bargaining agreement in effect immediately before the transfer date shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. The reorganization shall not impair the civil service status of any such reassigned employee who immediately before the effective date of this act either holds a permanent appointment in a position classified under chapter 31 of the General Laws or has tenure in a position by reason of section 9A of chapter 30 of the General Laws.

Notwithstanding any general or special law to the contrary, all such employees shall continue to retain their right to collectively bargain pursuant to chapter 150E of the General Laws and shall be considered employees for the purposes of said chapter 150E.

Nothing in this section shall be construed to confer upon any employee any right not held immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer,

963 reassignment, suspension discharge layoff or abolition of position not prohibited before such
964 date.

965

966 (b) All petitions, requests, investigations and other proceedings appropriately and duly brought
967 before or referred to the executive director of the criminal history systems board by the transferor
968 agency and pending before the executive director before the effective date of this act, shall
969 continue unabated and remain in force, but shall be assumed and completed by the department of
970 criminal justice information services.

971

972 (c) All orders, rules and regulations duly made and all approvals duly granted by the criminal
973 history systems board, which are in force immediately before the effective date of this act, shall
974 continue in force and shall thereafter be enforced by the department of criminal justice
975 information systems, until superseded, revised, rescinded or canceled, in accordance with law.

976

977 (d) All books, papers, records, documents, equipment, buildings, facilities, cash and other
978 property, both personal and real, including all such property held in trust, which immediately
979 before the effective date of this act are in the custody of the criminal history systems board shall
980 be transferred to the department of criminal justice information services.

981

982 (e) All duly existing contracts, leases and obligations of the criminal history systems board shall
983 continue in effect but shall be assumed by the department of criminal justice information

984 services. No existing right or remedy of any character shall be lost, impaired or affected by this
985 act.

986 SECTION 65. The department, in consultation with the information technology division, shall
987 regularly report on its progress in building the information technology system necessary to fulfill
988 the requirements established in subsection (a) of section 172 of chapter 6 of the General Laws,as
989 amended by section 16 of this act. The department shall file such reports with the chairpersons of
990 the joint committee on the judiciary, the joint committee on public safety and homeland security,
991 the chairpersons of the House and Senate committees on bonding, capital expenditures and state
992 assets and the chairpersons of the House and Senate committees on ways and means and shall
993 post such reports on the department's publicly-accessible website. The department shall file such
994 reports 6, 12, 15 and 18 months after this act is approved by the governor, and at 3-month
995 intervals thereafter, if necessary, until the project is complete. Each report shall include a
996 description of the progress made in the planning, design and construction of the system since the
997 preceding report, and shall include a comparison of actual expenditures to budgeted expenditures
998 and of budgeted timelines to actual timelines. Such report shall also include a certification
999 whether the department expects the complete information techonology system to be fully
1000 operational 18 months after this act is approved by the governor, as required in this act.

1001

1002

1003 SECTION 66. Notwithstanding the provisions of sections 32, 32A, 32B, 32E, 32F, and 32J of
1004 chapter 94C of the General Laws, or any other general or special law to the contrary, a person
1005 serving a mandatory minimum sentence for violating any provision of the above referenced

sections as of the effective date of this act, shall be eligible for parole after serving two-thirds of the minimum term of the sentence if the sentence is to a state prison, or after serving one-half of the minimum term of the sentence if the sentence is to a house of correction.

SECTION 67. Notwithstanding any general or special law to the contrary, chapter 127A of the General Laws shall apply to any felony, as defined in section 1 of chapter 274 of the General Laws, committed on or after the effective date of this act.

SECTION 68. Section 5A of this act is hereby repealed.

SECTION 69. Sections 1-5, 11-14, 16-17, 22-27, 31-33, 50, 52-62, 64 and 68 shall take effect 18 months after this act is approved by the Governor.